

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 Adv. Case No. 10-05383-smb

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6 In the Matter of:

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8 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

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10 Debtor.

11 - - - - - x

12 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF

13 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

14 Plaintiff,

15 v.

16 STANLEY SHAPIRO, et al.,

17 Defendants.

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1 U.S. Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004
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5 October 5, 2017
6 10:26 AM
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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: KAREN

1 **Hearing re: Discovery Conference**

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25 **Transcribed by: Sonya Ledanski Hyde**

1 A P P E A R A N C E S :

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14 Shapiro, David Shapiro 1989 Trust, Leslie Shapiro

15 Citron, Leslie Shapiro 1985 Trust, Trust F/B/O

16 [A.J.C.], [K.F.C.], and [L.L.C.], Kenneth Citron, Trust

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P R O C E E D I N G S

THE COURT: Madoff.

MR. CALVANI: Good morning, Your Honor.

THE COURT: Good morning. Anybody on the other side?

MR. CALVANI: We have not seen them this morning.

THE COURT: All right, second call.

MR. CALVANI: All right, thank you, sir.

(BREAK)

THE COURT: Madoff.

MR. CALVANI: Torello Calvani, Baker Hostetler.
Here with me is my colleague, Jamie Rollinson.

THE COURT: How do you do?

MR. ROLLINSON: Good morning, Your Honor.

MR. CALVANI: We represent the Plaintiff, Irving Picard.

THE COURT: Okay.

MR. MILLER: Good morning, Your Honor. I'm Robert Miller of Lax & Neville. This is Barry Lax, Lax & Neville. We represent the Defendants.

THE COURT: Okay.

MR. LAX: Good morning, Your Honor.

THE COURT: You know, reading these letters, it's not clear to me what's in dispute.

MR. CALVANI: Yes, Your Honor.

1 THE COURT: It seems to me to be a moving target.

2 MR. CALVANI: It does to me as well. But if I
3 could have a couple of minutes, I think I could frame the
4 issues in dispute succinctly.

5 THE COURT: Well, assuming that they are prepared
6 to give the stipulation they said they're going to give --

7 MR. CALVANI: Yes.

8 THE COURT: -- which I take it is stipulating to
9 all of the deposits and withdrawals in these accounts since
10 the beginning of time, not just two years.

11 MR. CALVANI: That's correct, Your Honor.

12 MR. MILLER: Yes.

13 THE COURT: What's left?

14 MR. CALVANI: So, as of today, the Trustee has
15 four pending stipulations. One is to Dan Shapiro, one is to
16 Leslie Shapiro and her husband, Kenneth Citron, one is to
17 Leslie Shapiro by herself, and one is to Stanley Shapiro.

18 THE COURT: So you have those stipulations?

19 MR. CALVANI: We do, we do.

20 THE COURT: All right.

21 MR. CALVANI: Well, I have copies of them.

22 THE COURT: Okay --

23 MR. CALVANI: We don't have signed stipulations.

24 THE COURT: So --

25 MR. CALVANI: So --

1 THE COURT: Let's just deal with the non- -- well,
2 I'll call them non-Stanley accounts.

3 MR. CALVANI: Yes.

4 THE COURT: This is an issue of his actual
5 knowledge.

6 MR. CALVANI: Right.

7 THE COURT: With respect to the people who are
8 essentially good faith purchasers and just liable on that
9 one intentional fraud count, what more do you need regarding
10 that?

11 MR. CALVANI: I think we're in agreement on the
12 stipulations for Leslie, David and Ken.

13 THE COURT: Okay.

14 MR. CALVANI: We don't have signed stipulations.
15 I'm not sure why. In our proposed stipulations, as
16 currently drafted, we only seek the receipt of transfers
17 within the two-year period. It confirms net equity --

18 THE COURT: Right, but you have to have a whole
19 history of the --

20 MR. CALVANI: Right.

21 THE COURT: Yeah.

22 MR. CALVANI: And they've confirmed that equity
23 from the history of the account and we've agreed in the
24 stipulations not to seek discovery from those Defendants'
25 banks.

1 THE COURT: Okay.

2 MR. CALVANI: So, I think we've given them what
3 they asked for. I think we're in agreement there. We don't
4 have signed stipulations, but I'm -- you know, I'm hopeful.

5 We have a fourth stipulation to Stanley Shapiro.
6 In this stipulation we sought, not only the confirmation of
7 net equity over the lifetime of the account, we sought the
8 confirmation of the receipt of the initial transfers that
9 S&R Investment Company or Mr. Shapiro received.

10 THE COURT: Did you ask for those specific --

11 MR. CALVANI: Yes.

12 THE COURT: Okay.

13 MR. CALVANI: Yes, Your Honor.

14 THE COURT: So you've just got -- so you just have
15 the stipulation for Stanley, but not for the partnership or
16 Mrs. Shapiro?

17 MR. CALVANI: Well, the partnership is covered.
18 What we did is we asked for Stanley because we thought --

19 THE COURT: Right.

20 MR. CALVANI: We make little distinction between
21 Stanley and S&R. We believe he received the transfers. But
22 this week, we received an offer from the Defendants staying
23 that Stanley is now willing to stipulate to that as manager
24 for S&R, S&R Investment Company received the transfers from
25 Accounts 1SH14 and 1SH172. This should work. I believe

1 it's close to what we asked for.

2 I'm reviewing the BLMIS records to confirm in fact
3 that BLMIS paid the transfers directly from BLMIS to an S&R
4 Investment Company account at JP Morgan Chase. I think
5 that's correct, and as soon as we confirm that, I think we
6 have an agreement with respect to Stanley Shapiro and S&R
7 Investment Company, Renee Shapiro.

8 So, with respect to those four stipulations, I'm
9 hopeful. However, this week we also received an offer from
10 Defendants' counsel that Stanley Shapiro, as Trustee, would
11 stipulate that the David Shapiro Trust received the
12 transfers directly from BLMIS for Account 1SH28 and that the
13 Leslie Shapiro Trust receive the transfers directly from
14 BLMIS for Account 1SH30.

15 The problem with that stipulation is those aren't
16 the facts as we understand them and we're not willing to
17 stipulate to something that we don't believe is true.

18 Unlike S&R, the trust didn't have separate bank
19 accounts at JP Morgan Chase. According to the documents
20 we've produced to Defendants, it appears that the transfers
21 went directly from BLMIS to David and Leslie's respective
22 personal bank accounts at JP Morgan Chase. We have wire
23 transfers out of the BLMIS 703 account to their JP Morgan
24 Chase accounts.

25 THE COURT: Have David and Leslie stipulated to

1 those receipts?

2 MR. CALVANI: No, they will not. We also have
3 canceled checks that we've produced where the check is from
4 BLMIS to Leslie Shapiro individually, and deposited by
5 Leslie Shapiro in her personal bank account at JP Morgan
6 Chase.

7 THE COURT: So, what is the stipulation that you
8 have with Leslie and David --

9 MR. CALVANI: That is just what they'll give us as
10 to the receipt of the two-year transfers for their personal
11 bank account. As you -- you know, the strict liability
12 accounts where you don't need to show a lack of good faith.

13 THE COURT: But are there pending claims...
14 Aren't those the only claims pending against Leslie and
15 David at this point?

16 MR. CALVANI: Correct. Which is why we're seeking
17 the stipulations. Which is why we're not seeking the
18 stipulations from them as to the receipt of those transfers.
19 Mr. Shapiro is still liable for those --

20 THE COURT: No, but I guess what I don't
21 understand is, on the one hand you're telling me you have a
22 stipulation that satisfies you with respect to the transfers
23 received, the initial transfers received by David and
24 Leslie.

25 MR. CALVANI: Yes.

1 THE COURT: Then you tell me about these trust --
2 these trust BLMIS accounts --

3 MR. CALVANI: Yes.

4 THE COURT: -- that didn't have their own bank
5 accounts, and David and Leslie actually received those
6 transfers directly from BLMIS?

7 MR. CALVANI: That's correct. And --

8 THE COURT: So, what does the stipulation do?

9 MR. CALVANI: The confusion is -- I haven't
10 explained it well. The stipulation is just for their
11 personal accounts at BLMIS, not the accounts that were in
12 the name of the trusts.

13 THE COURT: So, you're saying they're the initial
14 transferees of the trust accounts?

15 MR. CALVANI: David and Leslie are the initial
16 transferees to the accounts.

17 THE COURT: All right.

18 MR. CALVANI: Yes. And we can't get a stipulation
19 to that, and that's fine.

20 So, in summary, you know, I believe the parties
21 may be able to stipulate to the two-year transfers received
22 by David and Leslie and Kenneth Citron, and I'm hopeful as
23 to a stipulation with Mr. Shapiro as to the transfers
24 received either by him or by S&R.

25 However, until we have signed stipulations from

1 the Defendants, you know, we have no agreement. So --

2 THE COURT: That I understand.

3 MR. CALVANI: So, that's the question with the
4 stipulations.

5 THE COURT: But I thought that -- you know, I have
6 a couple of these letters where they said that this is what
7 they'll stipulate to. If they stipulated to that, would
8 that be satisfactory?

9 MR. CALVANI: We will not stipulate that the David
10 and Leslie Shapiro Trusts received initial transfers from
11 BLMIS --

12 THE COURT: Okay.

13 MR. CALVANI: -- because we don't think that's
14 true.

15 THE COURT: All right. But as to the other
16 stipulations which are referred to, I guess, in the latest
17 letter that was written?

18 MR. CALVANI: Yes. And I don't believe that we'll
19 have an issue with those.

20 THE COURT: So, why don't you just submit an order
21 setting forth those facts as facts found in the case or
22 stipulated to? Just, you know, what I've seen in these
23 cases are you say we're in agreement, and then you sit down
24 and you write the stipulation and it just, you know, doesn't
25 get done or it takes forever to be done.

1 MR. CALVANI: That's been our experience. So --

2 THE COURT: So, why don't you just -- any
3 objection to just submitting an order that establishes at
4 least the facts that you both agree are relevant
5 stipulations?

6 MR. MILLER: No objection, as long as it tracks
7 the letter that we submitted --

8 THE COURT: Good.

9 MR. MILLER: -- to the Court.

10 MR. CALVANI: Okay.

11 THE COURT: Settle it on notice.

12 MR. CALVANI: Great. So, that's the issue with
13 respect to --

14 THE COURT: Okay. Now, with respect --

15 MR. CALVANI: -- the stipulations.

16 THE COURT: -- to the trust accounts, you're still
17 seeking information -- well, the trusts didn't have, I
18 guess, bank accounts, so what are you doing about that now?

19 MR. CALVANI: We're seeking regular discovery from
20 Stanley Shapiro; not from Leslie and David, but from the
21 Trustee Stanley Shapiro as to the receipt of those
22 transfers. Because we don't just have to show net equity or
23 -- we have to show that someone received those transfers.
24 And no one's willing to step up and say that I received
25 those transfers.

1 MR. MILLER: Your Honor, with all respect I --

2 THE COURT: Watch out when he says with all
3 respect.

4 MR. MILLER: Mr. Shapiro has expressed the
5 stipulate -- is willing to stipulate and would have admitted
6 if he'd been asked, that the Leslie Trust and the David
7 Trust were the initial transferees.

8 THE COURT: Well, he's saying they're not, though.

9 MR. MILLER: Well, he --

10 THE COURT: In other words, he's satisfied, I
11 guess, to accept the stipulations regarding David and Leslie
12 individually. But there seems to be a dispute as to who was
13 the initial transferee of the trust accounts.

14 MR. MILLER: There are no additional transferee
15 claims outside the two-year against Leslie and David, which
16 is what they're trying to sort of walk their way around to.

17 THE COURT: Right, but it -- assuming that's the
18 case, if Leslie and David received the initial transfers
19 from the trust within two years and those were fictitious
20 profits, couldn't they recover them under the existing
21 complaint?

22 MR. MILLER: Within the two-year, and that's what
23 Leslie and David have both admitted to all the facts
24 necessary.

25 THE COURT: But not with respect to the trust

1 accounts?

2 MR. MILLER: With respect to the trust accounts,
3 the initial transfer claims against Leslie and David,
4 outside the two-year were dismissed. The (indiscernible)
5 transfer claims were also dismissed.

6 THE COURT: No, I know, but what I'm saying is if
7 the trust -- this Trustee, not Mr. Shapiro in his capacity
8 as Trustee, but in Picard, can show that the transfers to
9 the trust accounts during the two-year period went to David
10 and Leslie, can't he recover that?

11 MR. MILLER: I see what the confusion is. Within
12 the two-year period, we'll stipulate to anything that Leslie
13 and David have received. There were no transfers from the
14 trust account within the two-year period.

15 MR. CALVANI: That's correct, Your Honor.

16 THE COURT: So, they're --

17 MR. MILLER: They're seeking information outside -
18 -

19 THE COURT: So, what is this about --

20 MR. CALVANI: So, we're seeking to hold Mr.
21 Shapiro liable for those transfers as Trustee. And that's
22 what our discovery is aimed at. We have outstanding
23 document requests --

24 THE COURT: What does it matter who the initial
25 transferee is if you're seeking to hold him liable as

1 Trustee?

2 MR. CALVANI: Because I think we're entitled to
3 know who received the transfers, if we're going to hold Mr.
4 Shapiro liable for it. I don't want him later down the road
5 saying --

6 THE COURT: Well, what's the theory of liability
7 against Mr. Shapiro if he's not the initial transferee?

8 MR. CALVANI: What -- excuse me, Your Honor?

9 THE COURT: What is the basis of Mr. Shapiro's
10 liability as a Trustee if he's not the transferee? In other
11 words, if the Trust never received the transfer --

12 MR. CALVANI: Right.

13 THE COURT: -- then how can he be liable for that
14 transfer as a Trustee and he'd only be liable in his
15 capacity a trustee then, wouldn't he?

16 MR. CALVANI: I'm not sure, Your Honor.

17 THE COURT: I have to tell you, I don't understand
18 what this dispute is, but... So, what is it that you're
19 looking for?

20 MR. CALVANI: So, we are actually looking for a
21 motion to compel certain responses to document requests and
22 requests for admission that we have served on Stanley
23 Shapiro.

24 THE COURT: Is that the second set of letters that
25 I've got here?

1 MR. CALVANI: Yes, Your Honor. So --

2 THE COURT: Well, let me deal with the first ones,
3 this issue of the third-party subpoenas on the banks.

4 MR. CALVANI: Sure.

5 THE COURT: Is that resolved?

6 MR. CALVANI: No, Your Honor, it is not resolved.
7 After not receiving responses to our proposed stipulations,
8 over the summer we served six subpoenas on Defendants'
9 third-party banks. Four of those subpoenas are moot because
10 the banks have responded and said we don't have responsive
11 documents for those accounts.

12 At issue today are two subpoenas that the Trustee
13 served on JP Morgan and Wells Fargo Advisors for documents
14 concerning transfers in accounts held by Mr. Shapiro and S&R
15 Investment Company.

16 So, setting aside the issue of net equity and the
17 fact that we don't have stipulations, setting aside the fact
18 that the Defendants have raised affirmative defenses arguing
19 that the Trustee can't trace these transfers, we believe we
20 are entitled to this discovery for the independent reason
21 that it's relevant to Shapiro's knowledge.

22 Mr. Shapiro withdrew large sums of money in
23 advance and what we believe in preparation for BLMIS's
24 inevitable collapse and we're entitled to discovery on what
25 he did with this money because it goes to his state of mind.

1 THE COURT: What he did with the money?

2 MR. CALVANI: Yes, Your Honor.

3 THE COURT: Sounds like a subsequent transfer
4 claim.

5 MR. CALVANI: Well, I --

6 THE COURT: Why would it matter -- how would it be
7 relevant what he did with the money?

8 MR. CALVANI: Right.

9 THE COURT: Whether he bought uranium stock or
10 lottery tickets or invested it in the business?

11 MR. CALVANI: Well, I mean, after -- as we allege
12 in our complaint, in 2002 Mr. Shapiro met with Annette
13 Bongiorno and Paul Konigsberg and they worked together to
14 fabricate trades.

15 THE COURT: Mm hmm.

16 MR. CALVANI: And they did this in 2003. And
17 following those meetings, we see large withdrawals of money
18 out of BLMIS. We see \$7.5 million in April 2003, \$4 million
19 in April 2004, \$4.1 million in 2005, \$3 million in 2008.
20 And during the criminal trial, the district court allowed
21 the government to introduce evidence that the Defendants,
22 O'Hara and Perez, withdrew large sums of money after
23 learning of the fraud. So, we think what he did with the
24 money is relevant.

25 THE COURT: But -- I understand the relevance of

1 his withdrawing money --

2 MR. CALVANI: Yes, Your Honor.

3 THE COURT: -- but why does it matter what he did
4 with it?

5 MR. CALVANI: So, we have Rule 2004 examination
6 testimony from Mr. Shapiro that he withdrew money from BLMIS
7 to invest it in Treasuries or mutual funds at Bear Sterns or
8 Wachovia. Well, his split-strike conversion accounts were
9 invested in Treasuries and mutual funds when they were out
10 of the market.

11 THE COURT: So, why don't you ask him at a
12 deposition why he withdrew money to invest in the
13 investments that he was supposedly invested in under the
14 split-strike strategy?

15 MR. CALVANI: Because we think he --

16 THE COURT: In other words, you know what he did
17 with it, or at least you...

18 MR. CALVANI: Well, I want to confirm it with the
19 documents because I think the documents are a better source
20 of evidence than testimony about events that happened some
21 time ago. So, if the documents still exist, we believe
22 we're entitled to them. You know, for discovery purposes, I
23 think relevance is a very, you know, easy burden to meet.

24 And so, what he did with the money -- I mean, he
25 could have left it at BLMIS and just said to Ms. Bongiorno,

1 please keep it in Treasuries, or please keep it in mutual
2 funds. But he didn't. He got it out of BLMIS --

3 THE COURT: But did he have that kind of an
4 account, or did Madoff have discretion over the account?

5 MR. CALVANI: He had -- yes, he had two kinds of
6 accounts. So, he had the accounts managed by Annette
7 Bongiorno, which are more buy and hold accounts where they
8 invest in stock and they hope that the stocks appreciate,
9 and if they don't, we've alleged that they back-date trades
10 and short stocks so that they show better gains on the
11 account statements.

12 He also had accounts managed by Frank DiPascali.
13 These are the (indiscernible) split-strike conversion
14 strategy accounts. Those accounts are invested in
15 Treasuries half the year. The Annette accounts can be
16 invested in Treasuries. And we allege that Stanley Shapiro
17 was part of a small, privileged group who Madoff trusted and
18 who Madoff gave special access and special privileges. And
19 if he had asked Annette Bongiorno to put this money in
20 Treasuries, we would have done it.

21 Our case has been built upon notes that Stanley
22 Shapiro sent to and from Ms. Bongiorno or Paul Konigsberg,
23 and on the face of the notes they at times seem innocuous.
24 You know, it's cancel a trade here, or give me a gain or
25 loss in this account. But when you look at how Ms.

1 Bongiorno affected those transactions in his account
2 statements, you see the hallmarks of fraud. And so, these
3 notes that seem innocuous about what he can do, what he can
4 ask Ms. Bongiorno to do, we think he had that power and we
5 think it's relevant.

6 THE COURT: All right. So, you want to make a
7 motion to compel?

8 MR. CALVANI: Well, we don't -- on the subpoenas,
9 I believe it's their burden to move to quash. And if they
10 move to quash --

11 THE COURT: Can they move to -- other than on
12 privacy grounds -- and I had this argument in one of the
13 other cases --

14 MR. CALVANI: Yeah.

15 THE COURT: -- other than on privacy grounds, do
16 they have standing to move to quash a subpoena on a bank?

17 MR. CALVANI: Well, I think that's --

18 THE COURT: I've had this issue I know with Ms.
19 (Indiscernible).

20 MR. CALVANI: Well, the bank -- I mean, the bank
21 has basically said to us, we're going to hold these
22 documents back --

23 THE COURT: All right.

24 MR. CALVANI: -- until you work out the dispute
25 amongst yourselves. So, we can move to compel. I'm happy

1 to do that.

2 THE COURT: Well, you'd move to compel on the
3 bank.

4 MR. CALVANI: Right. And they can oppose it, but
5 I don't know that they'd have standing in that instance.

6 THE COURT: No, but that's --

7 MR. CALVANI: So, I understand Your Honor's point,
8 but whatever the proper procedure is, if they can move to
9 quash the subpoena, we'd be happy to oppose that motion.
10 But --

11 THE COURT: I don't if they can move to quash a
12 subpoena that's served on a third-party.

13 MR. CALVANI: No.

14 THE COURT: You can certainly move to compel
15 discovery from a third-party and then maybe they can
16 intervene and say, wait a minute, I have privacy rights or
17 there's some other basis --

18 MR. CALVANI: Yeah.

19 THE COURT: -- or some other standing to seek to
20 quash the subpoena.

21 MR. CALVANI: And so, I will look at the proper
22 procedure to do that and we will act accordingly. We're
23 happy to move to compel the banks to do that. But we would
24 also like to move to compel Mr. Shapiro to answer really 18
25 document requests and a couple requests -- and several

1 requests for admission.

2 So, you know, we served document requests back in
3 October 2016. Mr. Shapiro objected to 39 requests and he
4 agreed to produce documents in response to only 10 requests.
5 Your Honor held a Rule 7007 conference last February.

6 THE COURT: I remember.

7 MR. CALVANI: We met and conferred in April. And
8 then in June, the Trustee sent letters to opposing counsel
9 where we withdrew about 21 requests, we narrowed the scope
10 of 14 requests, and we restated only four requests as
11 originally drafted. We did this as a compromise to try and
12 move this case forward. And we believe that the narrowed
13 and restated requests go to the heart of our claims against
14 Mr. Shapiro. And in fact, these are the notes that I was
15 talking about earlier, the notes he wrote to Mr. Konigsberg
16 or Ms. Bongiorno about cancelling trades or requesting gains
17 or losses. And --

18 THE COURT: Well, I see that's your Request Number
19 7, but 5 and 6 seem kind of broad.

20 MR. CALVANI: So --

21 MR. MILLER: And Your Honor, the requests are
22 still broad. We've responded and agreed to produce
23 documents to some of these requests. Others are still too
24 broad. Requests for admissions are almost exclusively about
25 the trust accounts and receipt of subsequent transfers from

1 the trust accounts before the two-year claim period. Same
2 thing that they're looking for on the stipulation. And so,
3 you know, we don't think that this issue is ready for the
4 Court. We are still willing to meet and confer on our new
5 responses.

6 But as to the subpoenas, I do think that it's
7 privacy grounds, and I do think too --

8 THE COURT: Okay.

9 MR. MILLER: -- JP Morgan has objected.

10 THE COURT: Well, if JP Morgan objects, JP Morgan
11 can raise its own objections. I haven't heard anything from
12 JP Morgan.

13 MR. MILLER: But I do want to respond just to this
14 idea very briefly that they need discovery from JP Morgan on
15 withdrawals that they already have a complete record of and
16 to which Mr. Shapiro is willing to stipulate.

17 THE COURT: Well, they want to know about the
18 outflow from that account --

19 MR. MILLER: We think that's about subsequent
20 transfers. Their theory is that it was reinvested in other
21 securities. Mr. Shapiro himself was not in the split-strike
22 strategy. He was in the portfolio, the core accounts that
23 were managed by Ms. Bongiorno, who was not in the split-
24 strike strategy. But regardless, they already -- they had
25 the Rule 2004 testimony on whether the money was invested

1 elsewhere.

2 THE COURT: Look, you can make a motion to compel
3 discovery -- or on the banks, I guess, because it's the
4 banks' subpoenas. If the banks have objections, I'll hear
5 those. Obviously, you know, if you have privacy objections,
6 you can raise those.

7 It's not clear to me why this outflow information
8 is relevant or why the subpoenas are relevant if you have
9 all the inflow information to those accounts.

10 MR. CALVANI: Yes, Your Honor.

11 THE COURT: By the way, the fact that some of this
12 information may disclose subsequent transfers doesn't mean
13 they can't get it if it's relevant or pertinent to some
14 other issue in the case.

15 MR. MILLER: We don't think it's relevant or
16 pertinent to any other issue in the case. We think their
17 motive is to get subsequent transfers.

18 MR. CALVANI: So, unfortunately, Your Honor, I
19 think we're at an impasse on our narrow request as we've
20 reframed them.

21 THE COURT: Well, I've looked at your requests.
22 Five looks very broad, 6 looks very broad --

23 MR. CALVANI: So, Your Honor --

24 THE COURT: Let me just --

25 MR. CALVANI: Yes. Excuse me.

1 THE COURT: Seven seems okay. You know, Shapiro's
2 communications with BLMIS are certainly relevant. I've seen
3 the notes that were photocopied into the complaint. I
4 haven't really gone through these one by one. Look, if you
5 think it's worthwhile to meet and confer, this is the
6 second, at least the second discovery conference I've heard
7 in this case, and in fact, you did meet and confer and
8 apparently made some progress the last time.

9 Just, you know, one word of caution. You know,
10 when I get these letters and you say we asked him 139
11 interrogatories and he only answered 45 --

12 MR. CALVANI: Yeah.

13 THE COURT: -- without telling me what he didn't
14 answer, it doesn't really help.

15 MR. CALVANI: Yes, Your Honor.

16 THE COURT: Okay? So, as I said, you've made
17 progress in the past regarding meet and confer, but you can
18 make a motion, certainly, to compel discovery on the banks,
19 which sounds fairly narrow at this point. You know, the
20 outstanding requests and those kind of things are a little
21 different --

22 MR. CALVANI: And Your Honor --

23 THE COURT: -- and they don't concern the bank.

24 MR. CALVANI: If we fail to reach an agreement on
25 the narrowed request for production of documents or the

1 requests for admission, can we make a motion to compel in
2 response to those?

3 THE COURT: Well, I mean, I guess you can, but as
4 I said, I can look at these... Come back to Number 5, "All
5 documents concerning the circumstances under which Shapiro
6 planned to or continued to invest with BLMIS." That's just
7 -- that's so broad.

8 MR. ROLLINSON: Your Honor, on that -- Jamie
9 Rollinson, sorry to interrupt.

10 They did respond to that and restate their
11 response and say they are willing to produce documents
12 responsive to his decision to initially invest. So, you
13 know, those kind of things we can certainly try to sort out.

14 THE COURT: Well, that's what I'm saying.

15 MR. ROLLINSON: Yeah, but --

16 THE COURT: You know, some of them are very
17 specific. Again, communications with BLMIS or Annette
18 Bongiorno are obviously relevant. When you start to ask for
19 all documents related to these broad categories, they can be
20 narrowed, I think, to hone in on what it is you're really
21 looking for. And the narrower they are, the more likely I'm
22 going to say, yeah, you're right.

23 MR. ROLLINSON: Okay.

24 THE COURT: All right.

25 MR. ROLLINSON: Thank you, Your Honor. Your

1 Honor, just one final point I just wanted for clarification,
2 because I'm not sure who was on the phone with bank's
3 counsel, JP Morgan Bank's counsel. I think they've
4 objected, general objections, but they have responsive
5 documents, so I don't think they're objecting to producing
6 documents. What we agreed to with fellow counsel over there
7 is we would tell them to hold back any production until we
8 can --

9 MR. MILLER: I think they made specific objections
10 on relevance grounds, on grounds of privilege. I think
11 they've objected on a number of grounds.

12 THE COURT: I would suggest that -- once again, in
13 this matter I'm hearing two different sides.

14 MR. ROLLINSON: Certainly.

15 THE COURT: I would suggest that -- just make a
16 motion to compel and, you know, maybe the bank's will say we
17 have the documents, it's your fight, meaning the Defendants'
18 fight. We don't really care, we're like stakeholders.

19 MR. ROLLINSON: Yes.

20 THE COURT: If they have their own objections,
21 obviously they can object raise them at that point. If they
22 think they have personal privilege objections, I don't know
23 what they would be. I don't know how they could object on
24 grounds of relevance. They're not parties to the lawsuit.
25 But they certainly can object on grounds of proportionality

1 or things like that.

2 How many documents do the banks still hold? This
3 is -- these are old records.

4 MR. CALVANI: Right.

5 THE COURT: I realize JP Morgan was involved and
6 we're all certain they may have retained or held -- had a
7 litigation hold on all these, but how far back do their
8 documents go?

9 MR. CALVANI: I don't know, Your Honor. But I
10 know that we served six subpoenas and only two came back
11 with responsive documents. And I think that goes to the
12 fact that we are requesting all documents.

13 THE COURT: All right.

14 MR. CALVANI: Okay. Thank you, Your Honor. I
15 think we have a way forward.

16 THE COURT: All right.

17 ALL: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded at 10:51 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

**Sonya
Ledanski Hyde**

Digitally signed by Sonya Ledanski
Hyde
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Date: October 9, 2017

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